(17,617.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 503.

FRED BARDES, TRUSTEE OF THE ESTATE OF FRANK T. WALKER, BANKRUPT, APPELLANT,

vs.

THE FIRST NATIONAL BANK OF HAWARDEN, IOWA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 25, 1900.

1 In United States District Court, Northern District of Iowa, Western Division.

FRED BARDES, Trustee of Estate of Frank T. Walker, Bankrupt,
vs.
FIRST NATIONAL BANK OF HAWARDEN, IOWA, ET AL. } In Equity.

Be it remembered that this case came up for hearing before the United States district court for the northern district of Iowa, western division, upon a bill of complaint in equity filed by Fred Bardes, trustee of the estate of Frank T. Walker, who had been adjudged to be a bankrupt upon his own petition, filed March 1, 1899, in this court, sitting in bankruptcy, in the western division of this district.

The defendants to the bill are The First National Bank of Hawarden, Iowa, a banking corporation created under the act of Congress commonly known as the national banking act, its place of business being at Hawarden, Sioux county, Iowa; also Frederick E. Watkins, J. A. Moody, A. Melrose, and L. K. Williams, citizens of the State of South Dakota, and Charles R. Allen, a citizen of Iowa, residing at Hawarden, and the general purpose of the bill is to secure a decree setting aside a transfer of a stock of goods by the bankrupt to the defendants, and to compel the defendants to account for the goods or their proceeds, on the ground that the transfer was in fraud of the provisions of the bankrupt act and in fraud of the creditors of the bankrupt, it being averred that the stock of goods so transferred by the bankrupt was of the value of thirty-five hundred dollars.

To this bill the defendants interposed a demurrer on the ground that this court could not take jurisdiction of the case, it being a suit brought by the trustee against third parties, and as the bankrupt could not have sued the defendants in this court if the proceedings in bankruptcy had not been instituted, therefore the court cannot entertain jurisdiction of the action brought by the trustee, and the question of the jurisdiction of the court having been thus put in issue, and this court desiring to obtain the opinion and instruction of the Supreme Court of the United States for its guidance in the premises, hereby certifies to the Supreme Court for its consideration and determination the following questions:

1st. Do the provisions of the second clause of section 23 of the act of Congress, known as the bankrupt act of 1898, control and limit the jurisdiction of all courts, including the several district courts of the United States, over suits brought by trustees in bankruptcy to recover or collect debts due from third parties or to set aside transfers of property to third parties alleged to be fraudulent as against creditors, including payments in money or property to preferred creditors?

2nd. Can the district courts of the United States under any cir-

cumstances entertain jurisdiction over suits brought by trus-
2 tees in bankruptcy to set aside fraudulent transfers of money or property made by the bankrupt to third parties before the institution of the proceedings in bankruptcy?

3rd. Can this court, being the district court for the northern district of Iowa, take jurisdiction over the suit as it now stands on the record?

4th. If the complainant should dismiss the suit as to the defendants living in Iowa, thus making it a suit between citizens of Iowa, on the one hand, and citizens of South Dakota, on the other, and involving over $2,000, exclusive of interests and costs, would jurisdiction exist in this court?

O. P. SHIRAS,
District Judge for Northern District of Iowa.

And it is further ordered that the transcript to be certified by the clerk of this court to the Supreme Court shall contain the bill of complaint, the demurrer filed thereto, and the foregoing certificate.

O. P. SHIRAS, *Judge.*

In the District Court of the United States in and for the Northern District of Iowa, Western Division.

In the Matter of the Estate of FRANK T. WALKER, Bankrupt.

FRED BARDES, Trustee, Complainant,
vs.
FIRST NATIONAL BANK OF HAWARDEN, IOWA; The Bank of Alcester, of Alcester, South Dakota, and Charles R. Allen, Defendants. } In Bankruptcy.

To the judges of the district court of the United States for the northern district of Iowa, western division, in equity:

Fred Bardes, trustee for the creditors of Frank T. Walker, bankrupt, of Sioux City, Iowa, a citizen of the State of Iowa and of the United States, brings this his bill into this court of bankruptcy against the First National Bank of Hawarden, Iowa, which is a corporation created and existing in due form of law under and by virtue of the acts of Congress relating to national banks; against the Bank of Alcaster, of Alcester, South Dakota, a copartnership, whose principal place of business is at Alcester, South Dakota, and which copartnership is composed of Frederick E. Watkins, J. A. Moody, A. Melrose, and L. K. Williams, and against Charles R. Allen, a resident and citizen of Hawarden, Iowa.

And thereupon your orator complains and says that on the 14th day of January, 1899, the said Frank T. Walker was engaged, at Hawarden, Iowa, in the business of selling, at retail, clothing, hats, caps, boots, shoes, rubber goods, and other articles of merchandise usually kept in a general clothing store, and that the said Frank T. Walker at said time was the owner of and possessed a similar stock of clothing and merchandise at Alcester, in the State of South Dakota.

3 And your orator further shows that at said time the said stock of clothing and merchandise possessed at Alcester, South Dakota, was of the reasonable value of thirty-five hundred dollars.

And your orator further shows that at said time and on the 16th day of January, 1899, the said Frank T. Walker was indebted to various persons for goods, wares, and merchandise previously sold and delivered to him in the sum of about twelve thousand dollars, and was indebted to the said First National Bank of Hawarden, Iowa, in the sum of about one thousand dollars for money previously borrowed from the said First national bank, and was indebted to the Bank of Alcester, of Alcester, South Dakota, a copartnership composed of various persons, in the sum of about four hundred and fifty dollars, and that at said time and on the 16th day of January, 1899, the said Frank T. Walker was insolvent and unable to liquidate his indebtedness aforesaid.

And your orator further shows that on the 16th day of January, 1899, the said Frank T. Walker made a pretended sale of his said stock of clothing and merchandise owned and possessed by him at Alcester, South Dakota, to one Charles R. Allen for the sum of about seventeen hundred and sixty-four dollars, which amount was evidenced by a promissory note executed by the said Charles R. Allen to the said Frank T. Walker on the said date; which promissory note was without interest and matured on or about the first day of August, 1899.

And your orator further shows that on the said 16th day of January, 1899, and at the time of the said sale of said stock of clothing and merchandise by the said Frank T. Walker to the said Charles R. Allen, the said Frank T. Walker made a pretended sale and delivery of said promissory note, by endorsement thereon, to the said First National Bank of Hawarden, Iowa, for the sum of about sixteen hundred and twenty-nine and $\frac{35}{100}$ dollars, and that at said time the said First National Bank of Hawarden, Iowa, paid to the said Walker the sum of about one hundred and seventy-five dollars in cash for said promissory note and applied the balance of said note to the discharge of the indebtedness of said Walker to the said First National Bank of Hawarden, Iowa, and to the said Bank of Alcester, of Alcester, South Dakota.

And your orator further complains and shows upon information and belief that by the pretended sale of said stock of merchandise to the said Allen and the execution of said note to the said Walker, and the sale and delivery thereof to the said First National Bank of Hawarden, Iowa, the said Walker intended to give a preference to the said First National Bank of Hawarden, Iowa, and to the said Bank of Alcester, creditors of the said Walker, over and above the other credits of the said Walker, and the said Charles R. Allen, the said Bank of Alcester, and the said First National Bank of Hawarden, Iowa, at the time of the pretended sale and endorsement of said note and the payment of the sum thereon and the discharge of the said indebtedness due the said First National Bank of Hawarden, Iowa,

and the said Bank of Alcester, South Dakota, had reasonable
4 cause to believe and did believe that said Walker was insolvent, and that it was the intention thereby to give a preference to the said First National Bank of Hawarden, Iowa, and the said Bank of Alcester, South Dakota, over and above the other creditors of the said Walker, and participated in said intention to give a preference, as aforesaid, fully knowing said Walker was insolvent, in fraud of the acts of Congress of the United States relating to bankruptcy.

And your orater further shows that about the 27th day of January, 1899, and within four months after said preference, a petition was filed in this cause by Friend Brothers Clothing Company of Milwaukee, Wisconsin, and Straw & Ellsworth Manufacturing Company of Milwaukee, Wisconsin, both corporations organized and existing under the laws of the State of Wisconsin, and by Lehman Aarons, a sole trader, under the name and style of Lehman Aarons & Company, of Milwaukee, Wisconsin, praying that service of said petition, with subpœna, be made upon said Frank T. Walker, as provided in the acts of Congress relating to bankruptcy, and that said Walker be adjudged by the court to be a bankrupt within the purview of said acts.

And your orator further states that about the first day of March, 1899, the said Frank T. Walker was adjudged by the court to be a bankrupt, as in said petition prayed, and at the first meeting of the creditors of said bankrupt, held about the 27th day of March, 1899, and not more than thirty days after said adjudication, at Orange City, in the county of Sioux and State of Iowa, in which county the said bankrupt had his principal place of business and resided and had his domicile, your orator was by the creditors of said bankrupt duly elected and appointed sole trustee of the estate of the said bankrupt, and about the 3rd day of April, 1899, and within ten days after the said appointment, qualified as said trustee by entering into bond to the United States, with sureties approved by the court, conditioned for the faithful performance of his official duties as said trustee; and your orator further shows that said appointment is still in force and is unrevoked, and that he now is the duly elected, qualified, and acting sole trustee of the estate of the said bankrupt.

And your orator further charges and alleges upon his information that the said defendants, The First National Bank of Hawarden, Charles R. Allen, and The Bank of Alcester, at the time of receiving said note and said stock of merchandise at Alcester, S. D., had knowledge of the object and intent with which the same was given to them, and received the same in order to assist and enable the said bankrupt to carry out the fraudulent purpose aforesaid.

And your orator further alleges upon information and belief that at the time said note was given and the alleged sale of the stock of merchandise made to the defendants, as aforesaid, the said Walker was largely indebted on past-due claims and was acting in contemplation of insolvency, and that said transfers were made and

received with intent to hinder, delay, impede, and defraud his creditors, and with a view to prevent said property from being applied in the payment of his debts, and with the further intent to cover up his property so that his creditors should not be able to reach the same.

And your orator further shows upon information and belief that the said pretended sale of the said stock of clothing and merchandise in the village of Alcester and State of South Dakota, by the said bankrupt to the said Charles R. Allen was in contemplation of bankruptcy and was fraudulent and void, and that the said Allen was not the real purchaser of said stock of clothing and merchandise, but that the said pretended purchase by the said Allen was for the use and benefit of the said First National Bank of Hawarden, Iowa, and the Bank of Alcester, of Alcester, South Dakota, and that the said First National Bank of Hawarden, Iowa, was the real purchaser of said stock of clothing and merchandise, and that the sale thereof to the First National Bank of Hawarden, Iowa, was for the purpose of creating a preference in favor of the said First National Bank of Hawarden, Iowa, and the Bank of Alcester, South Dakota, of the indebtedness of the said Walker to the said defendants, as aforesaid.

And your orator further alleges that Frederick E. Watkins is president of said First National Bank of Hawarden, Iowa, and is the managing partner of said copartnership known as the Bank of Alcester, of Alcester, South Dakota, and was such officer and such managing partner during the times and in all the transactions referred to herein.

And your orator further shows and alleges that by the provisions of the act of Congress approved July 1, 1898, to establish a uniform system of bankruptcy, your orator became, by operation of law, entitled as such trustee to the possession of all the property of the said Frank T. Walker, bankrupt, and to all property conveyed by him to said First National Bank and Charles R. Allen, defendants, in fraud of his creditors as aforesaid, and entitled to sue for and recover the same as assets of said bankrupt; and forasmuch as your orator can have no adequate relief except in this court, sitting as a court of bankruptcy, and to the end, therefore, that the said defendants may, if they can, show cause why your orator should not have the relief hereby prayed, and may, according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make (but not under oath, the same being expressly waived) to the premises, and to all the separate matters hereinbefore stated and charged, as full and particularly as if the same were repeated and interrogated as to each of said matters, and that the said note and the conveyance of said stock of merchandise be declared fraudulent and void, and that the same may be decreed to be invalid against the complainant as trustee aforesaid, and that the same may be set aside, and that the said defendants and each of them may be compelled to account for the said property and the profits thereof so fraudulently conveyed, as aforesaid, and any

moneys received by virtue of said conveyances or note, and that the said defendants, their agents and servants, be restrained
6 and enjoined from disposing of or in anywise transferring said property, or of any money received thereunder, and from mixing and commingling said property with their own, under penalties to be pronounced by the court, and that your orator may recover the costs of this proceeding and have such other and further relief as may seem just and proper, may it please your honor to grant unto your orator the writ of subpœna, issued out of and under the seal of this court, directed to said defendants and each of them, commanding them, on a day certain therein to be named and under a certain penalty, to appear in this honorable court, then and there to answer all and singular the premises, and to stand and perform and abide such further order, direction, and decree as may be made against them or either of them.

And your orator will ever pray.

FRED BARDES,
Trustee, Complainant.
LOHR, GARDINER & LOHR,
Solicitors for Complainant.

H. C. GARDINER, *Of Counsel.*

STATE OF IOWA, }
Woodbury County, } *ss:*

On this 27th day of April, 1899, before me personally appeared Fred Bardes and made oath that he has read the foregoing bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein stated to be based upon information and belief, and that as to those matters he believes them to be true.

FRED BARDES.

Subscribed and sworn to before me this 27th day of April, 1899.

F. W. LOHR,
[SEAL.] *Notary Public in and for Woodbury County, Iowa.*

Filed April 28, 1899.

A. J. VANDUZEE, *Clerk,*
By J. H. BOLTON, *Deputy.*

7 In the District Court of the United States in and for the Northern District of Iowa, Western Division.

In the Matter of the Estate of FRANK T. WALKER, Bankrupt.

FRED BARDES, Trustee, Complainant;
vs.
FIRST NATIONAL BANK OF HAWARDEN, IOWA; The Bank of Alcester, of Alcester, South Dakota, and Charles R. Allen, Defendants. } In Bankruptcy.

Demurrer of the Above-named Defendants to the Bill of the Above-named Complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and for- as the same are therein set forth and alleged, doth demur to said bill, and for causes of demurrer showeth:

1st. That it doth appear by the complainant's own showing by said bill that he is not entitled to the relief demanded in said bill against these defendants.

2nd. It appears from said bill that this court is without jurisdiction for the reason that the controversy is between citizens of the same State.

Wherefore, and for divers other good causes of demurrer appearing on said bill, defendants doth demur thereto, and they pray the judgment of this honorable court whether they shall be compelled to make answer to said bill, and they humbly pray to be hence dismissed with their reasonable costs therein sustained.

WM. MILCHRIST,
Solicitor & of Counsel for Defendants.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in the point of law.

WM. MILCHRIST,
Of Counsel for Defendants.

STATE OF IOWA, *Woodbury County,* } *ss:*

William Milchrist, being duly sworn, deposes and says: I am the attorney for the above-named defendants. The foregoing demurrer is not interposed for delay.

WM. MILCHRIST.

Subscribed in my presence and sworn to before me by the said William Milchrist this 10th day of June, A. D. 1899.

CORA G. WHEELOCK,
[SEAL.] *Notary Public in & for Woodbury County, State of Iowa.*

Filed June 12th, 1899.

A. J. VANDUZEE, *Clerk.*

8 UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, }

I, A. J. Vanduzee, clerk of the United States district court in and for the northern district of Iowa, do hereby certify that the foregoing transcript contains the full, true, and complete copies of the bill of complaint and the demurrer in the case of Fred Bardes, trustee of estate of Frank T. Walker, bankrupt, against First National Bank of Hawarden, Iowa, *et al.*, as full, true, and complete as the original of the same now remains on file and of record in my office, and that attached hereto is the original certificate of O. P. Shiras, judge of the district court of United States in and for said district, certifying to the Supreme Court of the United States for its consideration certain questions arising in said suit.

In witness whereof I hereunto subscribe my name and affix the seal of said U. S. district court, at my office, in Dubuque, in said northern district of Iowa, this 14th day of October, A. D. 1899.

[Seal District Court U. S., Northern District of Iowa.]

A. J. VAN DUZEE,
Clerk U. S. District Court, Northern District of Iowa.

Transcript, 46 fo.	4.60
Certificate & seal	35
	$4.95

Endorsed on cover: File No., 17,543. N. Iowa D. C. U. S. Term No., 429. Fred Bardes, trustee of the estate of Frank T. Walker, bankrupt, complainant, *vs.* The First National Bank of Hawarden, Iowa, *et al.* Filed October 21, 1899.

9 In the United States District Court in & for Northern District of Iowa, Western Division.

FRED BARDES, Trustee of the Estate of Frank T. Walker, Bankrupt,
vs.
FIRST NATIONAL BANK OF HAWARDEN, IOWA, ET AL.

Be it remembered that heretofore, on the 4th day of January, A. D. 1900, the same being one of the regular days of the regular October term, 1899, of the United States district court for the northern district of Iowa, western division, the following proceedings were had in the above-entitled cause, the Honorable O. P. Shiras, judge of said district, presiding, as appears of record on page — of Record — of said court, to wit:

FRED BARDES, Trustee of the Estate of Frank T. Walker, Bankrupt,
vs.
FIRST NATIONAL BANK OF HAWARDEN, IOWA, ET AL. } Equity.

This cause coming up this 4th day of January, 1900, upon the demurrer interposed on behalf of defendants to the petition questioning the jurisdiction of the court in the case, and the court, being advised in the premises, sustains the demurrer, holding that upon the face of the pleadings and the record it appears that the court is without jurisdiction to entertain and decide the case; and thereupon—

It is ordered and decreed that the bill be dismissed for want of jurisdiction, but without prejudice to complainant's right to institute proceedings in a court having jurisdiction; to which ruling and order of dismissal the complainant at the time duly excepted, and prayed the court to certify the question of its jurisdic-
10 tion in the premises to the Supreme Court of the United States for its decision thereon.

I, A. J. Van Duzee, clerk of United States district court in and for the northern district of Iowa, do hereby certify that the foregoing transcript contains a full, true, and complete copy of the judgment of the court entered in the proceedings entitled "Fred Bardes, trustee of estate of Frank T. Walker, bankrupt, *vs.* First National Bank of Hawarden, Iowa, *et al.*," as full, true, and complete as the original of said order remains of record in my office in the western division of the northern district of Iowa.

Seal District Court U. S., Northern District of Iowa.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at my office, this 4th day of January, A. D. 1900.

A. J. VAN DUZEE,
Clerk U. S. District Court in and for Northern District of Iowa.

11 In United States District Court, Northern District of Iowa, Western Division.

FRED BARDES, Trustee of Estate of Frank T. Walker, Bankrupt,
vs.
FIRST NATIONAL BANK OF HAWARDEN, IOWA, ET AL.

The complainant in the above-entitled case, Fred Bardes, trustee of the estate of Frank T. Walker, bankrupt, deeming himself aggrieved by the order and judgment of the court rendered January 4th, 1900, dismissing the case for want of jurisdiction, does hereby appeal from such order and judgment to the Supreme Court of the United States, filing herewith an assignment of errors, and he prays that this appeal may be allowed and that a transcript of the record

and proceedings may be duly certified to the Supreme Court, at Washington, D. C.

FRED BARDES,
Trustee of Frank T. Walker Estate, in Bankruptcy,
By SHULL & FARNSWORTH, *Solicitors.*

Appeal allowed.
O. P. SHIRAS, *Judge.*

Filed January 12th, 1900.

A. J. VAN DUZEE, *Clerk.*

12 In United States District Court in & for Northern District of Iowa, Western Division.

FRED BARDES, Trustee of Estate of Frank T. Walker, Bankrupt, }
vs.
FIRST NATIONAL BANK OF HAWARDEN, IOWA, ET AL. }

Assignment of Errors.

Now comes Fred Bardes, trustee of estate of Frank T. Walker, bankrupt, complainant in above case, and assigns the following errors in the order and decree of the court in said case:

1. The court erred in holding that it was without jurisdiction to hear and determine the said case and the controversy therein presented.

2. The court erred in holding that under the provisions of the act of Congress known as the bankrupt act the district court of the United States have not jurisdiction over all suits brought by trustees in bankruptcy to recover the property or assets of the estate without regard to the amount involved or the citizenship of the parties to the suit, but that the jurisdiction of the district courts is limited by the provisions of the second clause of section 23 of the bankrupt act.

3. The court erred in dismissing this case on the ground that the court could not take jurisdiction thereof.

Wherefore the appellant prays that the ruling, order, and decree appealed from may be reversed and set aside.

FRED BARDES,
Trustee of Estate of Frank T. Walker, Bankrupt,
By SHULL & FARNSWORTH, *Sol.*

Filed January 12, 1900.

A. J. VAN DUZEE, *Clerk.*

13 In the United States District Court in & for Northern District of Iowa, Western Division.

FRED BARDES, Trustee of Estate of Frank T. Walker, Bankrupt,
vs.
FIRST NATIONAL BANK OF HAWARDEN, IOWA, ET AL. } Equity.

Be it remembered that this case coming before the court upon a demurrer to the bill questioning the jurisdiction of this court to entertain the case or decide the controversy set forth in the bill filed, and the court, upon consideration of the demurrer, having held that the court was without jurisdiction in the case and having entered an order dismissing the case for want of jurisdiction, but being desirous of obtaining the judgment of the Supreme Court of the United States upon the questions involved, to the end that justice should be done between the parties hereto, this court now certifies to the Supreme Court for its decision the question of the jurisdiction of this court over the case and controversy, and, to the end that this court may be fully advised in the premises, this court certifies to and asks the judgment of the Supreme Court upon the following questions:

1st. Do the provisions of the second clause of section 23 of the act of Congress known as the bankrupt act of 1898 control and limit the jurisdiction of all courts, including the several district courts of the United States, over suits brought by trustees in bankruptcy to recover or collect debts due from third parties or to set aside transfers of property to third parties alleged to be fraudulent as against creditors, including payments in money or property to preferred creditors?

14 2nd. Can the district court of the United States under any circumstances entertain jurisdiction over suits brought by trustees in bankruptcy to set aside fraudulent transfers of money or property made by the bankrupt to third parties before the institution of proceedings in bankruptcy?

3rd. Can this court, being the district court for the northern district of Iowa, take jurisdiction over the suit as it now stands on record?

4th. If the complainant should dismiss the suit as to the defendants living in Iowa, thus making it a suit between citizens of Iowa, on the one hand, and citizens of South Dakota, on the other, and involving over $2,000, exclusive of interest and costs, would jurisdiction exist in this court?

O. P. SHIRAS,
District Judge for Northern District of Iowa.

15 In the United States District Court in & for Northern District — Iowa.

I, A. J. Van Duzee, clerk of the United States district court in and for the northern district of Iowa, do hereby certify that the foregoing transcript contains a full, true, and complete copy of the

bill of complaint, the demurrer, the judgment of the court of January 4th, 1900, dismissing the bill of complaint, prayer for appeal, and assignment of errors in the case of Fred Bardes, trustee of estate of Frank T. Walker, bankrupt, against First National Bank of Hawarden, Iowa, *et al.*, as full, true, and complete as the original of the same now remains on file and of record in my office, and that attached hereto is the original certificate of O. P. Shiras, judge of the district court of the United States in and for said district, certifying to the Supreme Court of the United States for its consideration certain questions arising in said suit.

Seal District Court U. S., Northern District of Iowa.

In witness whereof I hereunto subscribe my name and affix the seal of said U. S. district court, at my office in Dubuque, in said northern district of Iowa, this 12th day of January, A. D. 1900.

A. J. VAN DUZEE,

Clerk United States District Court, Northern District of Iowa.

[Ten-cent U. S. internal-revenue stamp, canceled Jan. 12, 1900. A. J. V.]

Endorsed on cover: File No., 17,617. N. Iowa D. C. U. S. Term No., 503. Fred Bardes, trustee of the estate of Frank T. Walker, bankrupt, appellant, *vs.* The 1st National Bank of Hawarden, Iowa, *et al.* Filed January 22nd, 1900.

[redacted]

12054

(17,330.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 745.

S. DUFFIELD MITCHELL, RECEIVER IN BANKRUPTCY OF JOSEPH McD. SCOTT, DOING BUSINESS AS J. McD. SCOTT & COMPANY, PLAINTIFF IN ERROR,

vs.

JOHN C. McCLURE AND W. REED & COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 1, 1899.

In the District Court of the United States for the Western District of Pennsylvania.

S. DUFFIELD MITCHELL, Receiver in Bankruptcy of Joseph McD. Scott, Doing Business as J. McD. Scott & Co., *vs.* JOHN C. MCCLURE and W. REED & Co. } No. 10, May Term, 1899. Assignee's Docket.

Among the rolls, records, and judicial proceedings in the district court of the United States for the western district of Pennsylvania, at No. 10, May term, 1899, may be found the following words and figures, to wit:

Docket Entries.

On præcipe filed Jan'y 11, 1899, writ of replevin issued, returnable Feb'y 6, 1899. Jan'y 20, 1899, on motion to abate said writ filed, rule granted on plaintiff to show cause why said writ should not be abated, returnable the 20th inst. Jan'y 28, 1899, answer of S. D. Mitchell to said rule filed. Jan'y 28th, 1899, argument on motion to abate writ and answer, *C. A. V.* Feb'y 4, 1895, opinion of court and order granting said motion filed. Same day, bill of exceptions to said order filed. Feb'y 14, 1899, order made substituting S. Duffield Mitchell trustee, etc., in place of S. Duffield Mitchell, receiver, as plaintiff. Same day, appeal to United States circuit court of appeals for third circuit filed and allowed. Same day, assignments of error filed. Feb'y 16, 1899, writ of replevin returned, showing marshal's return thereon, and filed. Feb'y 18, 1899, application for writ of error to Supreme Court of the United States filed. March 4, 1899, leave granted and order made that said appeal to the circuit court of appeals be discontinued and withdrawn. March 6, 1899, certificate of judge that the sole question at issue was the question of jurisdiction of this court to en-
2 tertain this action filed. March 8, 1899, on petition for writ of error to the Supreme Court of the United States filed, writ of error allowed. March 11, said writ and citation issued. Same day, copy of citation, with acceptance of service by counsel for defendants, filed.

Appearances: For plaintiff, Thomas Patterson, S. Duffield Mitchell; for defendants, John S. Ferguson.

3 In the District Court of the United States for the Western District of Pennsylvania.

S. DUFFIELD MITCHELL, Receiver in Bankruptcy of Joseph McD. Scott, Doing Business as J. McD. Scott & Co., *vs.* JOHN MCCLURE and W. REED & COMPANY. } No. 10, May Term, 1899.

To William T. Lindsey, Esq., clerk of said court.

SIR: Issue summons in replevin against the above-named defendants, who are residents of Allegheny county, Pennsylvania, and

citizens of the State of Pennsylvania, to answer the plaintiff whereof they took the following-described property:

12 large boxes containing mirro-s, mantels, and sideboards; three crates containing laundry tubs; 14 small boxes containing marble bath tub, fixtures, etc.; one large hogshead containing foot-bath tub, one small hogshead containing bath-tub and plumbing fixtures, one large crate containing large bath tub, two barrels containing sundry fixtures, and two barrels containing tiling; all of which property is deposited in the name of the defendant John McClure in the storage warehouse of the above-named defendant, W. Reed & Company, situate at McKeesport, Allegheny county, Pennsylvania, and being of the value of two thousand five hundred ($2,500.00) dollars, and holds the same against pledges, etc.; returnable *sec. led.*

THOMAS PATTERSON,
S. D. MITCHELL,
Attorney- for Plaintiff.

Endorsements: No. 10, May term, 1899. S. D. Mitchell, receiver, *vs.* John McClure and W. Reed & Co. Præcipe for replevin. Filed Jan'y 11, 1899.

4 In the District Court of the United States for the Western District of Pennsylvania.

S. DUFFIELD MITCHELL, Receiver in Bankruptcy of Joseph McD. Scott, Doing Business as J. McD. Scott & Co.,
vs.
JOHN MCCLURE and W. REED & COMPANY.
} No. 10, May Term, 1899.

The President of the United States to the marshal of the district court of the United States for the western district of Pennsylvania, Greeting:

If S. Duffield Mitchell, receiver in bankruptcy of Joseph McD. Scott, formerly doing business as J. McD. Scott & Co., make you secure of prosecuting his claim with effect against John McClure and W. Reed & Company, defendants above named, who are residents of Allegheny county, Pennsylvania, and citizens of the State of Pennsylvania, late of your district, then we command you that, justly and without delay, you cause to be replevied and delivered to the said S. Duffield Mitchell, receiver in bankruptcy of Joseph McD. Scott, formerly doing business as J. McD. Scott & Co., the following personal property, to wit:

12 large boxes containing mirrors, mantels, and sideboards; three crates containing laundry tubs; 14 small boxes containing marble bath-tub, fixtures, etc.; one large hogshead containing foot-bath tub; one small hogshead containing bath-tub and plumbing fixtures; one large crate containing large bath-tub; two barrels containing sundry fixtures, and two barrels containing tiling, all of which property is deposited in the name of the defendant John McClure in the storage warehouse of the above-named defendant,

W. Reed & Company, situate at McKeesport, Aliegheny county, Pennsylvania, and being of the value of two thousand five hundred ($2,500.00) dollars.

which the said John McClure and W. Reed & Company took and unjustly detains, as it is said, etc., and that you put, by sureties and safe pledges, the said John McClure and W. Reed & Company so that they be and appear before our judge at the city of Pitts-
5 burgh, at the United States district court for the western district of Pennsylvania, to be there held, on the first Monday of February, A. D. 1899, to answer the said S. Duffield Mitchell, receiver in bankruptcy of Joseph McD. Scott, formerly doing business as J. McD. Scott & Co., of a plea whereof he took the goods and chattels aforesaid, the property of the said S. Duffield Mitchell, receiver in bankruptcy of Joseph McD. Scott, formerly doing business as J. McD. Scott & Co., and the same unjustly detains against sureties and safe pledges; and have you then and there this writ.

Witness the Honorable Joseph Buffington, judge of the district court of the United States for the western district of Pennsylvania, this eleventh day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

WM. T. LINDSEY, *Clerk.*

Endorsements: No. 10, May term, 1899. S. D. Mitchell, receiver, *vs.* John McClure and W. Reed & Co. Writ in replevin. Filed Feb'y 16th, 1899. Replevied as within commanded and property herein described delivered to plaintiff Jan'y 12th, 1899. So ans. Fred. C. Leonard, U. S. marshal, per J. W. Snyder, deputy.

Service	$2.00
Mileage.....	.90
	$2.90

6 In the District Court of the United States, Western District of Pennsylvania.

S. DUFFIELD MITCHELL, Receiver in Bankruptcy of J. McDonald Scott, Doing Business as J. McD. Scott and Company, *vs.* JOHN MCCLURE and REED AND COMPANY.	No. 10, May Term, 1899.

And now, Jan'y 20th, 1899, rule to show cause granted, ret. 28th January, 1899.

BY THE COURT.

Endorsements: No. 10, May term, 1899. In the district court of the United States for the western district of Pennsylvania. S. Duffield Mitchell, receiver, etc., *vs.* John McClure *et al.* Motion to abate the writ. Reasons and rule to show cause thereon. Filed January 20, 1899.

7 In the District Court of the United States for the Western District of Pennsylvania.

S. D. MITCHELL, Receiver in Bankruptcy of J. McD. Scott, Doing Business as J. McD. Scott & Co.,
vs.
JOHN MCCLURE ET AL.
No. 10, May Term, 1899.

To the Honorable Joseph Buffington, judge of said court:

The answer of S. Duffield Mitchell, receiver above named, respectfully sets forth:

That he took the goods in above-entitled case upon the claim that the same had been conveyed to the said defendant without consideration and in fraud of the bankrupt act and the rights of the creditors of said bankrupt, and that no title thereto passed to said defendant as against the receiver by reason of the premises.

That he believes and expects to be able to prove at the trial of the above-entitled case the truth of the allegations aforesaid.

That your respondent is informed and advised that the title of the said plaintiff is one peculiarly cognizable under the bankrupt act, and that the construction of the said act and the adjudication of said controversy arising as to the property is within the jurisdiction of this court, and not a matter of which the courts of the Commonwealth of Pennsylvania have or can have any cognizance or jurisdiction whatever.

In all of which the respondent respectfully submits himself to the order of this court.

S. D. MITCHELL, *Receiver*,
By THOS. PATTERSON, *Attorney*.

8 ALLEGHENY COUNTY, *ss:*

Before me personally appears S. D. Mitchell, who, being duly sworn, declares and says that the matters set forth in the foregoing answer are true and correct, to the best of his knowledge and belief.

S. D. MITCHELL.

Subscribed and sworn before me this 28th Jan., 1899.
WM. T. LINDSEY, *Clerk*.

Endorsements: No. 10, May T., 1899. S. D. Mitchell, receiver, *vs.* John McClure *et al.* Answer to rule to abate writs. Filed January 28th, 1899.

9 In the District Court of the United States for the Western District of Pennsylvania.

S. D. MITCHELL, Receiver in Bankruptcy, *vs.* JOHN MCCLURE ET AL. } No. 10, May Term, 1899.

Surmotion to abate writ of replevin.

BUFFINGTON, *J.:*

A petition in bankruptcy having been filed in this court against one J. McD. Scott, Mr. S. D. Mitchell was appointed receiver. Thereafter said Mitchell as receiver brought the present action of replevin in the district court against John McClure and others to recover certain personal property. All parties are citizens of Pennsylvania. The defendants move to abate the writ on the ground of lack of jurisdiction by district court. The motion involves the right of the plaintiff as receiver or as trustee (for he has since been so made and could be substituted as such) in a proceeding in bankruptcy to maintain in the district court an action of replevin for alleged property of the bankrupt held adversely under claim of title. What the jurisdiction of the district court sitting as a court of bankruptcy may be in other forms of procedure or what its power to reclaim or otherwise take possession of a bankrupt's power are questions now now before us. The present one is as to the jurisdiction of the district court to entertain a plenary common-law action.

While such question as affected by the present law is new, light is thrown upon it by the views announced by the Supreme Court of the United States on analagous jurisdictional questions under the act of 1867. In conferring jurisdiction on the district court that act provided: "The jurisdiction hereby conferred shall extend
10 * * * to the collection of all assets of the bankrupts."

In Morgan *vs.* Thornhill, 11 Wallace, 75, the right of appeal depended on what particular statutory provision vested jurisdiction. The third clause of section second of the act provided:

"Said circuit courts shall also have concurrent jurisdiction with the district courts of the same district of all suits at law or in equity which may or shall be brought by the assignee in bankruptcy against any person claiming an adverse interest, or by such person against such assignee, touching any property or rights of property of said bankrupt transferrable to or vested in such assignee."

After a careful discussion of the act it was held that the district court's jurisdiction in a plenary suit was based not on the provision extending jurisdiction "to the collection of all the assets of the bankrupts," but to the clause above quoted. In reaching such conclusion, speaking of the prior clauses which conferred a supervisory jurisdiction — the circuit court in cases and questions arising under the act, the court said:

"Apart from those two provisions, the third clause of the section provides that circuit courts shall also have concurrent jurisdiction

with the district courts of all suits at law or in equity which may or shall be brought by the assignee in bankruptcy against such assignee touching any property or rights of property of such bankrupt transferrable to or vested in such assignee."

Controversies, in order that they may be cognizable under that clause of the section, either in the circuit or district court, must have respect to some property or rights of property of the bankrupt transferrable to or vested in such assignee, and the suit, whether it be a suit at law or in equity, must be in the name of one of the
11 two parties described in that clause and against the other. All three of those conditions must concur to give the jurisdiction; but where they all concur the party suing may, at his election, commence his suit either in the circuit or district court, and if in the latter it is clear that the case, when it has proceeded to final judgment or decree, may be removed into the circuit court for re-examination by writ of error if it was an action at law, or by appeal if it was a suit in equity, provided the debt or damage claimed amounts to more than five hundred dollars and the writ of error is seasonably sued out and the plaintiff in error complies "with the statu-s regulating the granting of such suits," or the appeal is claimed and the required notices are given within ten days from the judgment or decree. * * * Independent of the bankrupt act, the district courts possess no equity jurisdiction whatever, as the previous legislation of Congress conferred no such authority upon those courts since the prior bankrupt act was repealed. Whatever jurisdiction, therefore, they possess in that behalf is wholly derived from the bankrupt act now in force.

Undoubtedly the jurisdiction conferred by the third clause of the second section is of the same character as that conferred upon the circuit courts by the eleventh section of the judiciary act, and it follows that final judgments in civil actions and final decree in suits in equity rendered such cases, where the sum or value exceeds two thousand dollars, exclusive of costs, may be re-examined in this court when properly removed by writ of error or appeal, as required by existing laws.

Concurrent jurisdiction with the district courts of all suits at law or in equity are the words of that clause, *showing conclusively that the jurisdiction intended to be conferred is the regular jurisdiction between party and party, as described in the judiciary act and the third article of the Constitution.*"

12 This construction was followed in Smith *vs.* Mason, 14 Wallace, 430; was recognized in Marshall *vs.* Knox, 16 Wallace, 556, and is of authoritative force today. Presumably with knowledge of these decisions, the present act was passed by Congress. That act invested district courts "with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation, in chambers and during their respective terms as they are now and may hereafter be held, to * * * cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided."

The language thus employed, "cause the estates of bankrupts to be collected," is not broader, if indeed as broad, as that in the former act, for it may be said that a jurisdiction extended "to the collection of assets" implies a grant of power to the authorized court to itself enforce such collection, while a grant of power "to cause such estates to be collected" necessarily carries with it no such implication. But, assuming they are substantially the same, why should the words of the latter act be given a construction which corresponding ones did not have under the former? The absence, too, in the new act of a jurisdictional grant of power to bring plenary suits corresponding to the third clause of section two of the former act, quoted above, is also suggestive of a purpose in Congress not to grant such power. But this is not all. In the twenty-third section of the present act we find a much narrower grant of Federal jurisdiction, and that to the circuit court alone. That section, which by its caption refers to the "jurisdiction of United States and State courts," by subdivision (*a*) limits the jurisdiction of the circuit court between trustees as such and adverse claimants concerning property acquired or claimed by trustees to cases where such court
13 would have had jurisdiction had such controversy been between the bankrupt and such adverse claimants and no proceedings in bankruptcy been instituted. Section (*b*) expressly restricts suits brought by a trustee to a court where a bankrupt might have brought or prosecuted them if proceedings in bankruptcy had not been instituted. To that extent it limits jurisdiction in both circuit and district courts. Such restrictions of Federal jurisdiction as compared with the broad jurisdictional provisions of the former act and the further positive requirement that suits by the trustee shall be brought in courts where the bankrupt could have done so evidence the intent of Congress that other courts beside the circuit and district ones could and in some cases must be reserted to in causing the estates of bankrupts to be collected. To attribute to that part of section 2, viz., "cause the estates of bankrupts to be collected," etc., the sweeping effect here claimed, viz., to authorize the district court to entertain jurisdiction of a plenary, common law action, is to ignore the limiting provisions of section 23, which by its caption refers to the "jurisdiction of United States and State courts."

To say that our construction of the act shears the district court of its power to administer the bankrupt law, even if it were true, is no reason to construe it otherwise. The remedy for such an evil, if it exists, is to be sought from Congress and not in strained judicial construction.

The action is for the possession of personal property. On the face of the pleadings no reason appears why the bankrupt could not have brought replevin in the common pleas of Pennsylvania. If such be the case, clause *b* of sec. 23 provides that where suit is brought the bankrupt's trustee should resort to that court. It is contended, however, that this section does not apply to the
14 present action, because the bankrupt, having conveyed these goods in fraud of his creditors, had no standing to question

the defendant's title; that the right of action vested in the bankrupt's receiver or trustee never was in the bankrupt, and consequently clause *b* has no application. Possibly sufficient answer to this contention is that such a defense goes to defeat the action and not to affect jurisdiction. But, assuming this section does not apply, the plaintiff must still show that the district court is by the act elsewhere vested with jurisdiction in this plenary, independent action of replevin.

After matured consideration we have reached the conclusion that the act does not grant such jurisdiction, either by express words or by necessary implication, and the motion to abate is therefore granted.

Endorsements: No. 10, May term, 1899. United States district court, western district of Pennsylvania. S. D. Mitchell, receiver, *vs.* John McClure *et al.* Opinion of Buffington, J. Filed Febr'y 4, 1899.

15 In the District Court of the United States for the Western District of Pennsylvania.

S. D. MITCHELL, Receiver in Bankruptcy,
vs.
JOHN MCCLURE ET AL. } No. 10, May Term, 1899.

And now, to wit, February 4th, 1899, the notice to abate the replevin writ in the above-stated case having been argued, the court, upon consideration thereof, orders and directs that the said writ of replevin shall be abated for the reasons set forth in the opinion filed herewith.

BY THE COURT.

Endorsements: No. 10, May term, 1899. S. D. Mitchell, receiver, *vs.* John McClure *et al.* Decree of court granting motion to abate writ of replevin. Filed Feb'y 4, 1899.

16 In the District Court of the United States for the Western District of Pennsylvania.

S. D. MITCHELL, Receiver, etc.,
vs.
MCCLURE ET AL. } No. 10, May Term, 1899.

And now, viz., Feb'y 4th, 1899, comes the above-named plaintiff and excepts to the order of the court abating the writ of replevin in above-entitled case this day entered.

JOS. BUFFINGTON, *Judge.*

Endorsements: No. 10, May term, 1899. S. D. Mitchell, receiver, etc., *vs.* McClure *et al.* Bill of exceptions to order abating writ. Filed Feb'y 4, 1899.

17 In the District Court of the United States for the Western District of Pennsylvania.

S. DUFFIELD MITCHELL, Receiver in Bankruptcy of Joseph McD. Scott, Doing Business as J. McD. Scott & Co., *vs.* JOHN MCCLURE and W. REED & COMPANY. } No. 10, May Term, 1899.

And now, to wit, February 14th, A. D. 1899, comes Thomas Patterson, Esq., counsel for the above-named plaintiff, and moves the court to substitute S. Duffield Mitchell, trustee of Joseph McD. Scott, formerly doing business as J. McD. Scott & Co., in place of S. Duffield Mitchell, receiver, etc., he having been appointed said trustee on January 11th, 1899, and having accepted the duties of said office, and having filed his bond, as required by law, on January 21st, 1899, which was duly approved, as will appear by the records in this court at No. 94, in bankruptcy.

BY THE COURT.

I have no objec-ion to the above order being made.

JOHN S. FERGUSON,
Attorney for McClure et al.

Endorsements: No. 10, May term, 1899. S. Duffield Mitchell, receiver, *vs.* John McClure *et al.* Motion to substitute plaintiff as trustee. Filed Feb'y 14, 1899.

18 In the District Court of the United States for the Western District of Pennsylvania.

S. DUFFIELD MITCHELL, Trustee in Bankrupty of Joseph McD. Scott, Doing Business as J. Mc. D. Scott & Co., *vs.* JOHN MCCLURE and W. REED & COMPANY. } No. 10, May Term, 1889.

S. Duffield Mitchell, the above-named plaintiff, deeming himself aggrieved by the decree made and entered in the above-entitled cause on the 4th day of February, A. D. 1899, petitions the said district court to grant a writ of error to the Supreme Court of the United States in above-stated cause for the reasons specified in the assignments of errors filed herewith, and he prays that such writ of error may be allowed, and that a transcript of the record of the proceedings and papers upon said order so made, duly authenticated, may be sent to the Supreme Court of the United States.

S. DUFFIELD MITCHELL,
Trustee, Appellant.

Endorsements: No. 10, May term, 1899. S. Duffield Mitchell, trustee, etc., *vs.* John McClure *et al.* Petition for writ of error. Filed March 8, 1899.

And now, March 8th, 1899, the within writ of error is allowed as prayed for.

JOS. BUFFINGTON, *Judge.*

19 In the District Court of the United States for the Western District of Pennsylvania.

S. D. MITCHELL, Receiver in Bankruptcy,
vs.
JOHN MCCLURE ET AL. } No. 10, May Term, 1899.

And now, February 14th, 1899, the plaintiff in the above-stated case, by Thomas Patterson, Esq., his attorney, comes into court and files the following assignments of error, to wit, viz:

First. The learned district court erred in making the following decree: "And now, to wit, February 4th, 1899, the motion to abate the replevin writ in the above-stated case having been argued, the court upon consideration thereof orders and directs that the said writ of replevin shall be abated for the reasons set forth in the opinion filed herewith."

Second. The learned district court erred in not dismissing the motion made by the above-named defendants to abate the writ of replevin in the above-stated case.

THOS. PATTERSON,
Att'y for Plaintiff in Error.

Endorsements: Pittsburgh, Pa., February 14th, 1899. No. 10, May term, 1899. S. D. Mitchell, receiver, *vs.* John McClure *et al.* Assignments of error. Filed Feb'y 14, 1899.

20 In the District Court of the United States for the Western District of Pennsylvania.

S. DUFFIELD MITCHELL, Trustee in Bankruptcy of Joseph McD. Scott, Doing Business as J. McC. Scott & Co., Bankrupt,
vs.
JOHN MCCLURE and W. REED & Co. } No. 10, May Term, 1899.

Certificate.

And now, to wit, March 6, A. D. 1899, I, Joseph Buffington, judge of the district court of the United States for the western district of Pennsylvania, do hereby certify that in the above-stated case the sole question in issue was the jurisdiction of this court to entertain the above-named action of replevin; which question arose upon the following statements of facts, viz:

The plaintiff, S. Duffield Mitchell, a citizen of the State of Pennsylvania, trustee in bankruptcy of Joseph McD. Scott, formerly doing business as J. McD. Scott & Co., bankrupt, duly appointed such trustee in bankruptcy by this court, at No. 94, in bankruptcy, herein, brought an action of replevin against the defendants, John McClure and W. Reed & Co., residents of Allegheny county, within this jurisdictional district and citizens of the State of Pennsylvania, to recover the possession of personalty, stated in said writ to be of the value of two thousand five hundred ($2,500.00) dollars, alleged to be the property of the plaintiff.

The United States marshal for this district executed the writ and delivered the property to the plaintiff.

The defendant John McClure subsequently obtained a rule to show cause why said writ of replevin should not be abated and restitution of said property to the defendant be ordered on the ground that this court had no jurisdiction to entertain such motion.

21 To this rule the plaintiff made answer—*pro ut* record—that he took the goods upon the claim that the same had been conveyed to the defendants without consideration and in fraud of the bankruptcy act and the rights of the creditors of said bankrupt, and that no title thereto had passed to said defendant as against the plaintiff by reason of the premises; that the title of the plaintiff is one peculiarly cognizable under the bankrupt act, and that the construction of the said act and the adjudication of said controversy arising as to the property is within the jurisdiction of this court and not a matter of which the courts of Pennsylvania have or can have any cognizance or jurisdiction whatever.

Upon argument thereof by counsel for the respective parties and after consideration thereof, this court ordered that the said suit of replevin be abated for the reason that under the bankruptcy act of July 1st, 1898, jurisdiction to entertain such a suit is not conferred upon this court, and the views of this court upon such question were embodied in an opinion now on file among the records of the above-stated case.

To this the plaintiff excepted, and this court thereupon sealed for him a bill of exceptions.

In testimony whereof I have hereunto set my hand and seal the day and year aforesaid.

JOS. BUFFINGTON, [SEAL.]
District Judge.

Endorsements: No. 10, May term, 1899. S. D. Mitchell, receiver, *vs.* John McClure *et al.* Certificate of judge. Filed March 6, 1899.

22 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States district court for the western district of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between S. Duffield Mitchell and John McClure and W. Reed & Company, a manifest error hath happened, to the great damage of the said S. Duffield Mitchell, receiver, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 7th day of April next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Joseph Buffington, judge of the district court of the United States for the western district of Pennsylvania, this 11th day of March, A. D. 1899.

[Seal of U. S. District Court, W. D. Pennsylvania.]

[SEAL.] WM. T. LINDSEY, *Clerk.*

Allowed by—
JOS. BUFFINGTON,
District Judge.

Filed.

23 *Citation.*

UNITED STATES OF AMERICA,
Western District of Pennsylvania, } *sct:*

To John C. McClure and W. Reed & Co., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 7th day of April next, pursuant to a writ of error filed in the clerk's office of the United States district court for the western district of Pennsylvania, wherein S. Duffield Mitchell, receiver in bankruptcy of Joseph McD. Scott, doing business as J. McD. Scott & Co., is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in said

appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this eleventh day of March, A. D. 1899, at the city of Pittsburgh, in said western district of Pennsylvania.

JOS. BUFFINGTON,
United States District Judge.

Attest: WM. T. LINDSEY, *Clerk.*

March 11, 1899.
Service accepted by—
JOHN S. FERGUSON,
Att'y for John McClure and W. Reed & Co.

24 In the District Court of the United States for the Western District of Pennsylvania.

S. DUFFIELD MITCHELL, Receiver in Bankruptcy of Joseph McD. Scott, Doing Business as J. McD. Scott & Co.,	No. 10, May Term, 1899.
vs.	
JOHN MCCLURE and W. REED & COMPANY.	

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, William T. Lindsey, clerk of the district court of the United States for the said district, do hereby certify that the annexed and foregoing pages contain a true and correct copy of the record and proceedings in the above-entitled case, so full and entire as the same remains of record and on file in my office.

Seal of U. S. District Court, W. D. Pennsylvania.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at Pittsburgh, this 11th day of March, A. D. 1899.

WM. T. LINDSEY, *Clerk.*

[Endorsed:] No. 10, May term, 1899. District court of the United States, western district of Pennsylvania. S. Duffield Mitchell, receiver, etc., *vs.* John McClure and W. Reed & Company. Exemplification of the record.

Endorsed on cover: File No., 17,330. W. Pennsylvania D. C' U. S. Term No., 745. S. Duffield Mitchell, receiver in bankruptcy of Joseph McD. Scott, doing business as J. McD. Scott & Company, plaintiff in error, *vs.* John C. McClure & W. Reed & Company. Filed March 18, 1899.

CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 512.

W. A. HICKS, TRUSTEE IN BANKRUPTCY OF ALBERT KNOST AND ARNOLD WILHELMY, PARTNERS AS KNOST & WILHELMY, APPELLANT,

vs.

BERTHA KNOST.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FILED JANUARY 31, 1900.

(17,626.)

(17,626.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 512.

W. A. HICKS, TRUSTEE IN BANKRUPTCY OF ALBERT KNOST AND ARNOLD WILHELMY, PARTNERS AS KNOST & WILHELMY, APPELLANT,

vs.

BERTHA KNOST.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 3, 1900.

1 United States Circuit Court of Appeals, Sixth Circuit.

W. A. HICKS, Trustee in Bankruptcy of Albert Knost and Arnold Wilhelmy, Partners as Knost & Wilhelmy, Appellant,
v.
BERTHA KNOST, Appellee.
No. 736. Certificate.

On March 22, 1899, Albert Knost and Arnold Wilhelmy, partners as Knost & Wilhelmy, were by the district court of the United States for the southern district of Ohio, sitting in bankruptcy, adjudged bankrupts, and W. A. Hicks was appointed trustee of said bankrupts, on the 13th of April, 1899, and duly qualified as such. Thereafter, upon May 4, 1899, Hicks, as such trustee, filed a bill in equity in the said district court against Bertha Knost, in which, after duly setting forth the adjudication of bankruptcy aforesaid and his appointment and qualification as trustee, he averred that on the 30th day of December, 1898, Knost and Wilhelmy, knowing the *the* insolvency of the firm, and with intent to prefer Bertha Knost, the defendant, a creditor of the said firm, and with further intent to defraud the other creditors of the firm, withdrew from the funds of the firm $2,280, and paid the same over to said Bertha Knost, who then had reason to know that the firm was insolvent, and that the payment to her was a preference of her as a creditor of the firm. The bill further averred that Albert Knost, one of the members of the firm, on January 6, 1899, then having knowledge of the firm's insolvency, and in order to hinder, delay and defraud the creditors of the firm, withdrew five hundred dollars from the funds of the firm and paid it over to defendant, Bertha Knost, without any consideration therefor.

2 The complainant further averred that Bertha Knost was insolvent, had no money or property in her own right, and that unless restrained from so doing would dispose of the money thus illegally coming into her hands.

The prayer of the bill was for a preliminary injunction restraining the defendant from transferring or in any way disposing of the $2,280 and the $500, until further order; and for a decree on final hearing for the payment over by her to the trustee of these sums.

Complainant made a motion for a preliminary injunction in accordance with the prayer of the bill and supported the same by an affidavit. The motion was resisted on the ground that the court had no jurisdiction to entertain the bill. The district court made an order denying the motion, and the trustee was allowed an appeal therefrom, and perfected the same.

Upon such appeal, the question of the jurisdiction of the district court necessarily arises. The members of the court find much difficulty in reaching a satisfactory conclusion thereon. The court, therefore, orders that the following question be certified to the Su-

preme Court of the United States, and an answer be respectfully requested:

Question. Has a district court of the United States jurisdiction to entertain a bill in equity filed by a trustee in bankruptcy appointed by it against a fraudulent grantee or transferee of the bankrupt resident in its district to recover the property belonging to the estate of the bankrupt, and by him fraudulently conveyed to defendant?

WM. H. TAFT,
HORACE H. LURTON,
C. D. CLARK,
Judges of the U. S. Circuit — of Appeals for the Sixth Circuit.

3 United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } *ss:*

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing certificate and statement of facts in the case of W. A. Hicks, trustee, *v.* Bertha Knost was duly filed and entered of record in my office by order of said court, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at the city of Cincinnati, Ohio, this 8th day of January, A. D. 1900.

FRANK O. LOVELAND,
Clerk of United States Circuit Court of Appeals for the Sixth Circuit.

[Endorsed:] United States circuit court of appeals for the sixth circuit. W. A. Hicks, trustee, *v.* Bertha Knost. Questions certified to the Supreme Court of the United States.

Endorsed on cover: File No., 17,626. U. S. C. C. of appeals, 6th circuit. Term No., 512. W. A. Hicks, trustee in bankruptcy of Albert Knost and Arnold Wilhelmy, partners as Knost & Wilhelmy, appellant, *vs.* Bertha Knost. (Certificate.) Filed January 31, 1900.